
(2006) 04 AHC CK 0234

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 3374 of 2005

Rajesh Sharma

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 20-04-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 6 AWC 6520 : (2006) 2 UPLBEC 1872

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : Ashok Khare and S.D. Shukla, for the Appellant; R.P.S. Kashyap and C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard counsel for the parties and perused the record.

2. This petition has been filed challenging the validity and correctness of the order dated 1.1.2005 passed by the District Inspector of Schools, Badaun as well as the proceedings dated 30.12.2004 passed by the Regional Committee Bareilly Region, Bareilly in so far as it pertains to Nehru Adarsh Inter College, Alapur Badaun. A further prayer has been made for quashing the order-dated 16.12.2004 (Annexure-10 to the writ petition) passed by the District Inspector of Schools, the Prabandh Sanchalak to manage the Institution and to hold fresh election in accordance with law. It is lastly prayed that respondent No. 6 in the mean time be restrained from discharging any management function of the Institution.

3. Nehru Adarsh Inter College Alapur District Badaun has a duly approved scheme of administration and is a recognized and aided educational institution governed by the Provisions of U.P. Intermediate Education Act, 1921.

4. It is alleged that elections have been held from time to time in accordance with the aforesaid Scheme of Administration and the last election was held on

28.6.97 in which Raziddin was elected as President and Rama Shankar was elected as Manager of the Committee of Management. While the aforesaid committee of management was functioning the Scheme of Administration was amended by the order of the Joint Director of Education dated 16.5.2000 by substituting the term of the committee of management to be term of five years instead of three years. Thereafter proceedings for holding fresh elections were initiated by committee of management. The committee of management elected on 28.6.97 issued election schedule on 18.9.2003 for holding fresh elections. Objections were tiled by the petitioner and eight members.

5. The D.I.O.S. by order-dated 2.7.2003 finalized the list of 300 members of the general body for holding fresh election.

6. Aggrieved by the aforesaid order dated 2.7.2003 and 18.9.2003 Civil Misc. Writ Petition No. 29552 of 2003, Nasimuddin and Anr. v. D.I.O.S. and Anr. and Civil Misc. Writ Petition No. 42856 of 2003, Nazibul and Ors. v. DIOS and Ors. were filed but it is alleged that elections were held in pursuance of ad-interim granted by the High Court in W.P. No. 42856 of 2003. The aforesaid writ petitions were allowed vide judgments dated 20.9.2004 and 18.11.2004 quashing the aforesaid orders directing the Prabandh Sanchalak to again finalize the list of members entitled to participate in the election.

7. It is further alleged that in pursuance of the judgment dated 18.11.2004 passed by this Court in Civil Misc. Writ Petition No. 29552 of 2003 elections have been held by the Prabandh Sanchalak on 18.12.2004 and the D.I.O.S. vide his order dated 1.1.2005 has also granted approval to the election held on 18.12.2004. Aggrieved, the petitioner has filed this writ petition.

8. The counsel for the petitioner submits that no opportunity of hearing was afforded to the petitioner and the eight members who had filed objection. It is submitted that it is settled legal position that the Prabandh Sanchalak is appointed for a limited purpose of holding election has no authority to enroll new members. He further submits that all the documents in regard to election have been prepared by the Prabandh Sanchalak in collusion with the private respondents and that the Prabandh Sanchalak/D.I.O.S. has failed to advert to the several objections filed before him against enrolment of 211 persons as members to the general body.

9. The counsel for the respondents submits that the election has been held in pursuance of the judgment of this Court dated 18.11.2004 in Civil Misc. Writ Petition No. 29552 of 2003 and there is no illegality or infirmity in holding the aforesaid elections which have been approved by the D.I.O.S. and committee of management is working in pursuance thereof.

10. Admittedly, the elections have been held by the Prabandh Sanchalak in pursuance of the order of this Court dated 18.11.2004 in Civil Misc. Writ Petition No. 29552 of 2003. The D.I.O.S. vide his order dated 1.1.2005 has already accorded approval to the election held on 18.12.2004. In case the petitioner

disputes the validity of elections on basis of list of members approved by the D.I.O.S. he has in either case a remedy before the Civil Court in view of the decision rendered in *Basant Prasad Srivastava and Ors. v. State of U.P. and Ors.* (1993) 2 UPLBEC-1333 wherein it has been held that where in the educational institution the election/finalisation of election process of Committee of Management is challenged under Article 226, the writ petition under Article 226 would not be maintainable and the only remedy in such cases is by filing election petition or filing civil suit. Paragraph 4 of the aforesaid judgment is quoted as under:

The learned Single Judge has observed that it was well settled proposition of law that in proceeding under Article 226 of the Constitution Courts should not interfere with election process and finalisation of list is not amenable to challenge in writ jurisdiction. It has also been observed that dispute regarding correctness of voters list is a highly disputed question of fact, which can be decided only by Civil Court. With these observations the learned Single Judge directed that the result of the be declared forthwith and further steps be taken in accordance with law.

11. To the same effect is the judgment in *Himmat Singh Vs. State of Haryana and Others*, in which it has been held that only a question of law can be raised and not a statement of fact. In that case the Hon"ble Supreme Court has held that whether the statement of the appellant or fifth respondent was correct or not could not ordinarily be decided in a writ proceedings. It is well known that in a writ petition ordinarily such a disputed question of fact should not be entertained.

12. Disputed question of facts as to holding of election in collusion with private respondents is alleged by illegal enrolment of 211 members to the general body which require adjudication of facts on basis of documentary and oral evidence. Deciding factual controversy in writ petition by adducing documentary and oral evidence is not feasible under Article 226 of the Constitution before the High Court.

13. The petition is dismissed on the ground of alternative remedy.